

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA
ex rel. DAREN WRIGHT,
Registration No. 50892-053
Petitioner

: CIVIL ACTION NO.

1 : CV-01-1154

V.

WARDEN, F.C.I. ALLENWOOD,
Respondent

**FILED
HARRISBURG**

JUN 26 2001

MARY E. D'ANDREA, CLERK
Per als
DEPUTY CLERK

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT
TO 28 U.S.C. §2241 AND §2243**

1. PLACE OF DETENTION: F.C.I. Allenwood, P.O. Box 2500, White Deer, PA.

17887

2. NAME AND LOCATION OF COURT WHICH IMPOSED SENTENCE.

William H. Caldwell, Judge, United States District Court, Middle District of
Pennsylvania

3. THE INDICTMENT NUMBER OR NUMBERS UPON WHICH AND THE
OFFENSE OR OFFENSES FOR WHICH SENTENCE WAS IMPOSED:

Docket No. 95CR140-02

4. THE DATE UPON WHICH SENTENCE WAS IMPOSED AND THE TERMS OF
THE SENTENCE.

04/25/96, 292 months' imprisonment, 5 years' supervised release
04/23/97, sentence reduced to 233 months' imprisonment, 5 years' supervised release

5. A FINDING OF GUILT WAS MADE FOLLOWING A PLEA OF GUILTY.

6. IF YOU WERE FOUND GUILTY AFTER A PLEA OF NOT GUILTY, CHECK
WHETHER THAT FINDING WAS MADE BY A JURY/A JUDGE WITHOUT A
JURY. N/A

7. DID YOU APPEAL FROM THE JUDGMENT OF CONVICTION OR THE
IMPOSITION OF SENTENCE? Yes

8. IF YOU ANSWERED "YES" TO (7), LIST

- (a) the name of each court to which you appealed: United States Court of Appeals for the Third Circuit.
- (b) the result in each court to which you appealed: Affirmed
- (c) the date of each result: 12/23/96 CTA3 Docket No. 95-7298
- (d) if known, citations of any written opinion or order entered pursuant to such results: None

9. STATE CONCISELY ALL THE GROUNDS ON WHICH YOU BASE EACH ALLEGATION THAT YOU ARE BEING HELD UNLAWFULLY:

- (a) The custody is in violation of the violation of the Constitution, laws or treaties of the United States.
- (b) The custody is in violation of legal principles articulated in **Richardson vs. United States**, 526 U.S. 813, 119 S.Ct. 1707, 143 L.Ed.2d 985 (1999), where the United States Supreme Court held that the district court judge must give an instruction advising that 21 U.S.C. 848 requires the jury be unanimous with respect the series of felony violations and that the series of felony violations produce substantial resources.
- (c) The custody is in violation of legal principles articulated in **Jones vs. United States**, 526 U.S. 227, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999), **Apprendi vs. New Jersey**, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) ["Jones/Apprendi"], and **United States vs. Jones**, 235 F3d 1231 (10th Cir. 2000), which held that the principles of **Apprendi** apply to cases prosecuted under the federal drug statutes 21 U.S.C. 801 et seq.
- (d) The custody is in violation of a treaty of the United States.

10. STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (9):

See attached Memorandum of Law in support of Petition for Writ of Habeas Corpus, a copy of which is attached hereto and incorporated by reference herewith.

11. HAVE YOU PREVIOUSLY FILED PETITIONS FOR HABEAS CORPUS, MOTIONS UNDER SECTION 2255 OF TITLE 28, UNITED STATES CODE, OR ANY OTHER APPLICATION, PETITIONS OR MOTIONS WITH RESPECT TO THIS CONVICTION? Yes

12. IF YOU ANSWERED "YES" TO (11), LIST WITH RESPECT TO EACH PETITION, MOTION OR APPLICATION.

(a) THE SPECIFIC NATURE THEREOF: 2255 motion

(b) THE NAME AND LOCATION OF THE COURT IN WHICH EACH WAS FILED.

Judge Caldwell, United States District Court, Middle District of Pennsylvania, Federal Building, Harrisburg, PA 17108

(c) THE DISPOSITION THEREOF:

Denied

(d) THE DATE OF EACH DISPOSITION:

2/24/98

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition. None

13. IF YOU DID NOT FILE A MOTION UNDER SECTION 2255 OF TITLE 28, UNITED STATES CODE, [OR IF YOU FILED SUCH A MOTION AND IT WAS DENIED] STATE WHY YOUR REMEDY BY WAY OF SUCH MOTION IS INADEQUATE OR INEFFECTIVE TO TEST THE LEGALITY OF YOUR DETENTION.

(1) The custody is a violation of a treaty of the United States. Such an issue must be brought in a 2241 habeas corpus petition because the habeas statute is the legislation that confers private rights on the prisoner and makes the treaty self-executing.

(2) The custody is in violation of the Constitution, laws or treaties of the United States. The indictment does not state all elements of the offense. The violation is not "harmless error" because it resulted in the imposition of a guilty plea that was not knowing and intelligent, and resulted in a sentence of 292 months, which was higher than the maximum sentence for the offense simpliciter. The deficiency was not cured because the 292 month sentence was used as a baseline for the downward departure to 233 months. An illegal sentence is a form of jurisdictional defect. **Bowen vs. Johnston**, 306 U.S. 19, 59 S.Ct. 442, 83 L.Ed. 855 (1939), **United States vs. Cockerham**, 237 F3d 1179 (10th Cir. 2001). The court has an independent obligation to determine jurisdiction and correct defects in jurisdiction. **Freytag vs. Commissioner of Internal Revenue**, 501 U.S. 868, 111 S.Ct. 2631, 115 L.Ed.2d 764 (1991), **United States vs. Tran**, 234 F3d 798 (2nd Cir. 2000), **Kelly vs. United States**, 29 F3d 1107, 1111-1113 (7th Cir. 1994), **Harris vs. United States**, 149 F3d 1304 (11th Cir. 1998)

(3) The legal principles set forth in **Jones/Apprendi/Jones** are retroactive to cases on collateral review because they are the first interpretation of the elements of 21 U.S.C. 841. Application of Apprendi principles result in the petitioner being "actually innocent" of the aggravated drug offense for which he was sentenced. **Rivers vs. Roadway Express**, 511 U.S. 298, 114 S.Ct. 1510, 1519, 128 L.Ed.2d 274 (1994). ["a judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction."], **Davis vs. United States**, 417 U.S. 333, 341-42, 94 S.Ct. 2298, 2302-03, 41 L.Ed.2d 109 (1974)[Held that in a section 2255 motion the court must hear the merits of a prisoner's claim based upon a circuit's decision interpreting the substantive reach of a criminal statute even though the case was decided after the conviction became final. **United States vs. McKie**, 73 F3d 1149 (DC Cir. 1996)[collecting cases]. 28 U.S.C. 2255 is not available because the first 2255 motion was filed before **Jones/Apprendi/Jones**. 28 U.S.C. 2255 is not available as a second motion because the rigid statutory requirements for filing a second 2255 motion are not satisfied by an issue based on the first interpretation of a statute. **Jeffers vs. Chandler**, 234 F.3d 277 (5th Cir.2000)(the Fifth Circuit noted 2241 habeas corpus relief may be available to a federal prisoner seeking to attack his conviction based on Supreme Court decision handed down after he had been convicted, sentenced and had exhausted his opportunities for post-conviction relief.), **Reyes-Requena vs. United States**, 243 F3d 893 (5th Cir. 2001).

(4) The legal principles of **Richardson vs. United States**, 526 U.S. 813, 119 S.Ct. 1707, 143 L.Ed.2d 985 (1999) are retroactive because the case is the first interpretation of 21 U.S.C. 848. **Rivers vs. Roadway Express**, 511 U.S. 298, 114 S.Ct. 1510, 1519, 128 L.Ed.2d 274 (1994). ["a judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction."], **Davis vs. United States**, 417 U.S. 333, 341-42, 94 S.Ct. 2298, 2302-03, 41 L.Ed.2d 109 (1974)[Held that in a section 2255 motion the court must hear the merits of a prisoner's claim based upon a circuit's decision interpreting the substantive reach of a criminal statute even though the case was decided after the conviction became final. **United States vs. McKie**, 73 F3d 1149 (DC Cir. 1996)[collecting cases]. More recent examples include **Lanier vs. United States**, 220 F3d 833 (7th Cir. 2000), **Murr vs. United States**, 200 F3d 895 (6th Cir. 2000), **United States vs. Cestnik**, 246 F3d 683 (10th Cir. 2001), **United States vs. Lopez**, 248 F3d 427 (5th Cir. 2001) wherein appellate courts held **Richardson** retroactive to collateral attack as the first interpretation of a criminal law. Such an interpretation of substantive criminal law is retroactive to the date of enactment of the statute. **Fiore vs. White**, 121 S.Ct. 712, 148 L.Ed.2d 629 (2001).¹

¹ **Apprendi vs. New Jersey**, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) in conjunction with **Carliss Jones** represents a first interpretation of what constitutes an element of 21 U.S.C. 841(b). Accordingly, like Lanier, which interpreted the elements of CCE, Apprendi also is retroactive to the date of enactment as the first interpretation of 21 U.S.C. 841.

14. HAS ANY GROUND SET FORTH IN (9) BEEN PREVIOUSLY PRESENTED TO THIS OR ANY OTHER FEDERAL COURT BY WAY OF PETITION FOR HABEAS CORPUS MOTION UNDER SECTION 2255 OF TITLE 28, UNITED STATES CODE, OR ANY OTHER PETITION, MOTION OR APPLICATION? No.

15. IF YOU ANSWERED "YES" TO (14), IDENTIFY WHICH GROUNDS HAVE BEEN PREVIOUSLY PRESENTED. N/A

16. WERE YOU REPRESENTED BY AN ATTORNEY AT ANY TIME DURING THE COURSE OF

(a) your arraignment and plea? N/A

(b) your trial, if any? YES

(c) your sentencing? YES.

(d) your appeal? YES

(e) preparation, presentation or consideration of any petition, motions or applications with respect to this conviction, which you filed? YES.

17. IF YOU ANSWERED "YES" TO ONE OR MORE PARTS OF (16), LIST

(a) the name and address of each attorney who represented you:

PLEA – Gerald A. Lord, Esquire

SENTENCING- Gerald A. Lord, Esquire

APPEAL – Idem.

PETITION TO VACATE, SET ASIDE OR CORRECT SENTENCE PURSUANT TO 28 U.S.C. SECTION 2255- Cheryl J. Sturm, Esquire

APPEAL FROM DENIAL OF PETITION TO VACATE, SET ASIDE OR CORRECT SENTENCE PURSUANT TO 28 USC 2255 - Idem.

18. IF YOU ARE SEEKING LEAVE TO PROCEED IN FORMA PAUPERIS, HAVE YOU COMPLETED THE SWORN AFFIDAVIT SETTING FORTH THE REQUIRED INFORMATION IN INSTRUCTIONS, PAGE 1 OF THIS FORM? N/A.

I, DAREN WRIGHT, STATE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON 6-21-01

Wright, D
DAREN WRIGHT

DATED: 6-25-01

Cheryl J. Sturm
Cheryl J. Sturm
Attorney-at-Law
408 Ring Road
Chadds Ford, PA 19317
484-771-2000

JS 44
(Rev. 07/86)CIVIL COVER SHEET **1-1-CV-1154**
Prisoner Doc

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiation sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS**Daren Wright****DEFENDANTS****Warden, FCI Allenwood****(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF**
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Cheryl J. STARK, ESQ.
408 Ring Road
Chadds Ford, Pa 19317 484-771-2000

ATTORNEYS (IF KNOWN)

U.S. Attorney's Office
228 Walnut St
Harrisburg, Pa 17108

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX ONLY)

- Citizen of This State ☐ 1 ☐ 1 PTF DEF
Citizen of Another State ☐ 2 ☐ 2
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3
Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.

28 U.S.C. 2224 / **Custody is a violation of Constitution**
Custody in violation of Jones / Appellate / Jones
Custody in violation of Richardson vs US

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395R) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC (405(g)) <input type="checkbox"/> 864 DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reap. <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Bank <input type="checkbox"/> 450 Com. <input type="checkbox"/> 460 Depo. <input type="checkbox"/> 470 Rack <input type="checkbox"/> 810 Select <input type="checkbox"/> 850 Secur. Exch. <input type="checkbox"/> 875 Custody <input type="checkbox"/> 891 Agric. <input type="checkbox"/> 892 Econo. <input type="checkbox"/> 893 Envir. <input type="checkbox"/> 894 Energ. <input type="checkbox"/> 895 Freec. <input type="checkbox"/> 900 Appe. <input type="checkbox"/> 950 Justic. <input type="checkbox"/> 950 Const. <input type="checkbox"/> 890 Other Action
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input checked="" type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights		

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Juvenile

VII. REQUESTED IN COMPLAINT:CHECK IF THIS IS A
☐ UNDER F.R.A.P. 23**CLASS ACTION****DEMAND \$**Check YES only if demanded in o
JURY DEMAND: ☐**VIII. RELATED CASE(S) IF ANY** (See instructions):**None**

JUDGE

DOCKET NUMBER

DATE

6/25/01

SIGNATURE OF ATTORNEY OF RECORD

Cheryl J. Stark